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Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with Assembly resolution 63/166.

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Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 63/166, the Special Rapporteur addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

The Special Rapporteur draws the attention of the General Assembly to his assessment that conditions of detention in most parts of the world do not respect the dignity of detainees and therefore fail to live up to international standards. He distinguishes among three categories of human rights of detainees, namely certain rights, which detainees have forfeited as a result of their lawful deprivation of liberty; relative rights, which may be restricted for justified reasons; and absolute rights, which detainees enjoy in full equality with other human beings.

In section IV, the Special Rapporteur shares some observations regarding children in detention. He expresses his concern that too many children are still deprived of their liberty, in spite of the existence of clear norms at the international level. He recalls that, if the detention of children is indispensable, conditions must adequately address their particular needs, including education, recreation and vocational training.

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I. Introduction

1. The present report is the eleventh submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is submitted pursuant to General Assembly resolution 63/166 (para. 38) and is the fifth report submitted by the present mandate holder. The report includes issues of special concern, in particular overall trends and developments with respect to issues falling within his mandate.

2. The Special Rapporteur draws attention to document A/HRC/10/44 and Corr.1, his main report to the Human Rights Council, in which he analysed the question of the death penalty in light of the prohibition of cruel, inhuman and degrading punishment. The Special Rapporteur found the distinction between corporal and capital punishment increasingly challenged by the dynamic method of interpretation of the right to personal integrity and human dignity and the universal trend towards the abolition of capital punishment, and called for a further study on the subject. He also examined a number of areas where torture and ill-treatment might occur as a direct or indirect result of current approaches to drug control policies, including the impact of those policies on access to palliative care and pain relief.

3. Document A/HRC/10/44/Add.4 and Corr.1 covered the period from 16 December 2007 to 14 December 2008 and contained allegations of individual cases of torture or general references to the phenomenon of torture, urgent appeals on behalf of individuals who might be at risk of torture or other forms of ill-treatment and responses by Governments. The Special Rapporteur continues to observe that a large number of communications are not responded to by Governments.

4. Document A/HRC/10/44/Add.5 contains a summary of the information provided by Governments and non-governmental organizations on the implementation of the recommendations of the Special Rapporteur following his country visits. Document A/HRC/10/44/Add.1 is a preliminary note on the mission to Equatorial Guinea, and documents A/HRC/10/44/Add.2 and 3 are reports of country visits to Denmark and the Republic of Moldova, respectively.

II. Activities related to the mandate

5. The Special Rapporteur draws the attention of the General Assembly to the activities he carried out pursuant to his mandate since the submission of his report to the Human Rights Council.

A. Communications concerning human rights violations

6. During the period from 17 December 2008 to 31 July 2009, the Special Rapporteur sent 28 letters of allegations of torture to 20 Governments, and 99 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 46 Governments. In the same period, 83 responses were received.

B. Country visits

7. With respect to fact-finding missions, the Special Rapporteur undertook visits to Uruguay and Kazakhstan. He also received an invitation from the Government of Cuba to visit the country in 2009 and hopes that this mission will take place in November. He is waiting for the confirmation of dates to visit Zimbabwe in October. He also hopes that dates for the visit to the Russian Federation, originally postponed in October 2006, will be forthcoming.

8. The Special Rapporteur visited Uruguay from 21 to 27 March 2009. At the conclusion of the visit, he expressed his appreciation to the Government for the full cooperation extended to him. Although he received few allegations of torture, he received numerous credible allegations of ill-treatment and excessive use of force in prisons, police stations and juvenile detention centres. However, he was encouraged by the fact that police custody was safeguarded by habeas corpus and that people were brought before a judge within a maximum of 48 hours. With regard to prison conditions, the Special Rapporteur found some sections inhuman and degrading, with conditions that included severe overcrowding and a lack of water, sanitation and access to medical treatment. Many, if not all, of the problems faced by the penitentiary system and the juvenile justice system were a direct result of the lack of a comprehensive criminal or penitentiary policy. As such, the Special Rapporteur recommended to the Government that it undertake a fundamental reform of the criminal justice and penitentiary systems aimed at the prevention of crime and the resocialization of offenders, moving away from a punitive penal and penitentiary system directed at locking up people to one that aimed to reintegrate prisoners into society. He encouraged the Government to put into practice the national plan to fight domestic violence, and to criminalize torture, in full accordance with the definition contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. The Special Rapporteur also undertook a visit to Kazakhstan from 4 to 11 May 2009. At the conclusion of his mission to that country, he thanked the Government for its invitation and cooperation. He also complimented the Government for its efforts to improve the conditions in places of detention, while taking note of the challenges that territory-wide monitoring is presenting in the country. He noted, however, that the detention facilities were prepared before his inspection, something that contradicted the idea of unannounced visits and independent fact-finding. He further added that rehabilitation and reintegration were not achieved through the current penitentiary system. Regarding the use of torture and ill-treatment, the Special Rapporteur expressed concern over numerous credible allegations that led him to conclude that those practices went beyond isolated cases. With regard to protection mechanisms, the legal framework was in line with international norms. However, many safeguards were not effective in practice; notably, there were no meaningful complaint mechanisms, as illustrated by the fact that there had been no allegations of torture against police officials in the past five years. Also, there was no independent body mandated to investigate those allegations. Finally, he noted that violence against women was a widespread phenomenon and that the State had not taken the appropriate measures to protect the victims.

10. The Special Rapporteur would like to recall requests for invitations sent to the following States: Algeria (request first made in 1997); Afghanistan (2005); Belarus (2005); Bolivia (Plurinational State of) (2005); Côte d'Ivoire (2005); Egypt (1996);

Eritrea (2005); Ethiopia (2005); Fiji (2006); Gambia (2006); India (1993); Iran (Islamic Republic of) (2005); Israel (2002); Jamaica (2008); Liberia (2006); Libyan Arab Jamahiriya (2005); Papua New Guinea (2006); Russian Federation with respect to the Republic of Chechnya (2000); Saudi Arabia (2005); Syrian Arab Republic (2005); Tunisia (1998); Turkmenistan (2003); United States of America (2004); Uzbekistan (2006); and Yemen (2005). The Special Rapporteur regrets that some of these requests are long-standing.

C. Key press statements

11. On 22 December 2008, the Special Rapporteur issued a joint statement with other mandate holders, welcoming the announcement by President-elect of the United States Barack Obama to close the Guantánamo Bay detention facilities and to strengthen the fight against torture.

12. On 23 January 2009, the Special Rapporteur issued a statement with another mandate holder applauding the executive order setting a timeline for the closure of the Guantánamo Bay detention centre and offered to help resolve the outstanding issues related to that closure.

13. On 9 February, jointly with other special procedures mandate holders, the Special Rapporteur issued a statement expressing their deep concern at the deteriorating human rights situation in Sri Lanka, particularly the shrinking space for critical voices and the fear of reprisals against victims and witnesses that had led to unabated impunity for human rights violations.

14. On 17 April 2009, the Special Rapporteur issued a joint statement with other mandate holders condemning the execution of nine men following an unfair trial in the Sudan.

15. On 18 June 2009, jointly with other mandate holders, the Special Rapporteur issued a statement expressing grave concerns at excessive police force, arbitrary arrests and killings in the Islamic Republic of Iran.

16. On 25 June, on the occasion of the United Nations International Day in Support of Victims of Torture, the Committee against Torture, its Subcommittee on Prevention, the Committee on the Rights of Persons with Disabilities, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Special Rapporteur issued a statement that called for ensuring that all persons with disabilities had the right to enjoy all human rights and were fully protected from torture and cruel, inhuman and degrading treatment and punishment.

17. On 7 July 2009, the Special Rapporteur issued a joint statement with other mandate holders expressing grave concern about reports of killings, ongoing arrests, the use of excessive police force and the ill-treatment of detainees in the Islamic Republic of Iran.

18. On 21 July 2009, jointly with other mandate holders, the Special Rapporteur issued a statement reiterating the request to the authorities of the Russian Federation to extend an invitation to visit the country.

D. Highlights of key presentations, consultations and training courses

Strengthening partnerships to improve follow-up

19. On 24 April, the Special Rapporteur delivered a statement at the eighteenth session of the Commission on Crime Prevention and Criminal Justice, at the Vienna International Centre, and gave a press conference to draw attention to the need for closer cooperation between the human rights mechanisms and the United Nations Office on Drugs and Crime.

20. On 22 June, the Special Rapporteur met in Geneva with the members of the Subcommittee on Prevention of Torture to discuss how the two mechanisms could reinforce each other.

21. On 25 June, the Special Rapporteur held a joint meeting with various representatives of the European Commission and its Directorate-General for External Relations in Brussels to discuss possible follow-up actions to his recommendations.

Awareness-raising activities in relation to the mandate

22. On 29 January, the Special Rapporteur participated in a panel discussion on "female genital mutilation: human rights violation or cultural tradition?", which was organized by the Renner Institute and Stop FGM in Vienna.

23. On 17 February, the Special Rapporteur delivered a public lecture on "The prevention of torture in the world" at the Institut des hautes études européennes at the University of Strasbourg in France.

24. During the ninth informal Asia-Europe Meeting seminar on human rights, held in Strasbourg, France, from 18 to 20 February, the Special Rapporteur delivered a presentation on "Human rights in criminal justice systems".

25. On 23 February, the Special Rapporteur participated in a panel regarding "Are adequate legal frameworks in place at the domestic level?: the protection provided by international law" at the International Conference on the Prevention of Torture and other Ill-Treatment, organized by the American University Washington College of Law and the Association for the Prevention of Torture, in Washington, D.C.

26. The Special Rapporteur also delivered a presentation on "A human rights-based approach to drug policy: a topic for the United Nations?" at the twentieth annual conference of the International Harm Reduction Association, held in Bangkok from 20 to 23 April.

27. On 24 April, the Special Rapporteur participated in a panel discussion on the occasion of the presentation of the "Guidelines for chaplain/prison pastoral care agents to prevent and combat torture and other cruel, inhuman and degrading treatment", organized by the International Commission for Catholic Prison Pastoral Care, in Vienna.

28. On 22 May, the Special Rapporteur participated in a round table with a former Guantánamo detainee at the Centre for Post-Graduate Studies in Sarajevo.

29. On 28 May, the Special Rapporteur delivered a presentation on "Investigating torture: cooperation between the Special Rapporteur on torture and forensic experts"

at the twenty-first congress of the International Academy of Legal Medicine in Lisbon.

30. On 10 June, the Special Rapporteur participated in a panel discussion on "Human rights violations after 9/11: a debate about accountability", organized by the Academy on Human Rights and Humanitarian Law of the American University Washington College of Law, in Washington, D.C.

31. On 25 June, the Special Rapporteur delivered the keynote speech at the conference on "The role of the legal profession in combating torture and other cruel, inhuman or degrading treatment", organized by Avocats sans frontières in Brussels.

Meetings in relation to particular countries

32. On 24 February 2009, the Special Rapporteur held several meetings with representatives from the United States State Department and Congress, inter alia, to discuss the latest developments relating to the closure of the Guantánamo Bay detention facilities.

33. While in Geneva between 9 and 13 March 2009, the Special Rapporteur met with the Ambassadors of Uruguay, Cuba, the Republic of Moldova and Jamaica, with the Chargé d'affaires of the Permanent Missions of Kazakhstan and the United States, with members of Government delegations from Indonesia and the Islamic Republic of Iran, with representatives from the Permanent Mission of the Russian Federation, with staff from the Office of the United Nations High Commissioner for Refugees and with a number of civil society partners of the mandate.

34. On 18 May 2009, the Special Rapporteur met with the Permanent Representative of Zimbabwe to the United Nations in Geneva to discuss dates for his country visit.

35. On 9 June, the Special Rapporteur held meetings with members of the United States Congress from both the House of Representatives and the Senate, to follow up on his earlier efforts in relation to the closure of the Guantánamo Bay detention facilities and other issues related to the fight against terrorism.

36. From 29 June to 3 July, the Special Rapporteur participated in the sixteenth annual meeting of special rapporteurs, representatives, independent experts and chairpersons of working groups of the Human Rights Council in Geneva.

37. On 3 July 2009, the Special Rapporteur met with representatives of the Permanent Mission of Cuba to discuss dates for his forthcoming mission.

III. Conditions of detention

A. Detainees: out of sight, out of mind

38. Since torture normally takes place behind closed doors, the Special Rapporteur spends much of his country missions in closed institutions, such as prisons, pretrial detention facilities, police and military lock-ups, psychiatric hospitals and special places of detention for children and juveniles, aliens and other groups.[1] In these

[1] The collective term for such places for the purposes of the present paper will be "places of detention".

facilities, the Special Rapporteur not only looks for evidence of torture but also assesses the general conditions of detention. Many persons whom the Special Rapporteur interviews in detention tell him that they were beaten up during the early days of their police custody because the police resort to such practices as a routine part of their work in order to extract confessions. The suffering caused by these few hours of torture, however, is often outweighed by the suffering individuals have to endure for years, and sometimes for the rest of their lives in inhuman and degrading conditions of detention, practically forgotten by the outside world.

39. In many countries, places of detention are constantly overcrowded and filthy locations, where tuberculosis and other highly contagious diseases are rife and which lack the minimum facilities necessary to allow for a dignified existence. Inter-prisoner hierarchies and violence are common features of many places of detention, and the guards often delegate their authority and responsibility for protecting detainees from discrimination, exploitation and violence to privileged detainees who in turn use this power for their own benefit. In many countries, corruption within the administration of justice, whether by the police, prosecutors, judges or prison officials, is rampant.

40. Many people think that torture is primarily the fate of political and other "high-ranking" prisoners. In reality, most of the victims of arbitrary detention, torture and inhuman conditions of detention are usually ordinary people who belong to the poorest and most disadvantaged sectors of society, including those belonging to the lowest classes, children, persons with disabilities and diseases, gays, lesbians, bisexuals, transgender persons, drug addicts, aliens and members of ethnic and religious minorities or indigenous communities.

41. They are arrested by police officers on the suspicion of having committed theft or similar minor crimes, often without sufficient evidence. Since in many countries confessions are still regarded as the most important proof during criminal trials, politicians, judges and prosecutors — and also the media — put considerable pressure on the police to produce confessions. This pressure is exacerbated by the fact that in many places no sophisticated methods of gathering evidence are available to law enforcement officers. Sadly, whether the victims confess or not depends less on what they have done than on how strong they are, both physically and mentally, in resisting torture. As a consequence, a considerable percentage of the roughly 10 million prisoners and detainees worldwide[2] may be innocent victims of arbitrary detention. They are often charged by prosecutors solely on the basis of their statements made during police interrogations. If they dare to complain to prosecutors or prison authorities about torture practices, their complaints are not taken seriously and are not properly investigated. One of the routine answers the Special Rapporteur hears from police officers, prosecutors, judges and high-level State officials to his question as to whether they have received any complaints about torture from detainees is that such complaints may well have been submitted, but they are not further investigated as they have been fabricated for the purpose of evading justice. That means that as soon one is behind bars, one is no longer trustworthy.

[2] The "World prison population list", published by the International Centre for Prison Studies at King's College in London (8th ed., 2009), provides the number of 9.8 million detainees, which may be a conservative estimate. In this report, the term "detainees" is primarily used for all persons deprived of personal liberty, whereas the term "prisoners" is used for persons serving a prison sentence after having been convicted of a crime.

42. Moreover, in many countries pretrial detainees are held together with convicted prisoners, and prison guards, prosecutors and judges treat them as criminals, in flagrant violation of the right of accused persons to be presumed innocent until convicted by a competent, impartial and independent court. The Special Rapporteur has interviewed many detainees who did not know whether they had already been sentenced or not. The prison guards did not know either. It simply does not matter, as the decision of the prosecutor to charge persons for a crime and send them to pretrial detention is already widely regarded as a "sentence". After pretrial detainees have spent several years in pretrial detention without access to a lawyer or a court, judges may finally sentence them to imprisonment simply to justify the time they have already spent in police custody and pretrial detention.[3]

43. The Special Rapporteur notes that one of his more surprising observations from his fact-finding missions to many countries in different regions of the world is that police and prison authorities simply do not regard it as their responsibility to provide detainees with the most basic services necessary for survival, let alone for a dignified existence or what human rights instruments call an "adequate standard of living", i.e., food, water, clothing, a toilet and a proper place to sleep. A few examples from fact finding missions by the Special Rapporteur illustrate this point. In Equatorial Guinea, detainees spend several weeks or even months in overcrowded, often dark and filthy police cells with virtually nothing but a concrete floor where they are kept for 24 hours a day. It is the task of their families to bring them water in plastic bottles and food in plastic bags. Since there are no toilets, they must use the same bottles to urinate and the plastic bags to defecate. In most police stations, including the police headquarters in Malabo, plenty of filled and stinking plastic bottles and bags had been thrown through the bars to the corridors and open yards. Some cells were so overcrowded that there was no space for everyone to sleep at the same time. Sleeping in shifts owing to a lack of space is common in many of the police stations and pretrial detention facilities the Special Rapporteur visited, including in Georgia, Nepal, Sri Lanka, Togo and the Transnistrian region of the Republic of Moldova. In Indonesia and Paraguay, detainees are not only deprived of basic services, such as food and medicine; in some cases, they even have to pay a daily fee for the very fact that they are "accommodated" in a cell. If detainees are poor or have no families in the vicinity to provide them with food or money, they depend on richer detainees who might demand slavery-like services in exchange.

44. In the police headquarters of Lagos, Nigeria, the Special Rapporteur found more than 100 detainees, including women and children, in the so-called "torture room" of the Criminal Investigation Department, where they were routinely subjected to severe methods of torture in the presence of other detainees, including gunshots into their legs from a short distance, and then left with serious injuries without any medical treatment. According to the judgement of the forensic doctor who accompanied the Special Rapporteur, some of the victims were going to die unless their legs were immediately amputated. In Mongolia, long-term prisoners are kept in strict solitary confinement for up to 30 years, and most of those interviewed by the Special Rapporteur in these maximum security cells were in a state of mind that no longer allowed for any meaningful interaction. Prisoners sentenced to death

[3] See, for example, A/HRC/7/3/Add.4, paras. 51 and 52; see also reports of the Working Group on Arbitrary Detention, for example, E/CN.4/2004/3, para. 75, and A/HRC/4/40, paras. 68 and 69.

are kept for several months in a dark cell, shackled and handcuffed, and may only be visited by one family member before they are executed. In Abkhazia, Georgia, the Special Rapporteur found a woman in an overcrowded cell who had already spent several years on death row without being able to leave her bed because she was paralysed. In Togo, the Special Rapporteur discovered three detainees with serious mental disabilities who were simply left unattended in a dark cell. In Chinese "re-education through labour" camps, Falun Gong practitioners and other "asocial individuals" are kept for years without any judicial proceedings and are subjected to various psychological and physical "re-education" measures that can only be regarded as brainwashing. In the Al-Jafr prison in Jordan, which was closed after the Special Rapporteur visited; in Bogambara prison in Kandy, Sri Lanka; in the juvenile prison of Kutoarjo in Indonesia; and in the children's temporary isolation and adaptation centres of Karaganda in Kazakhstan, as in many other places of detention around the world, corporal punishment constitutes a routine sanction for any violation of the institution's rules and is often applied as a reprisal against detainees who complain about inhuman conditions. In the infamous Libertad prison in Uruguay, hundreds of convicts and pretrial detainees spent several months or even years in tiny metal boxes called "las latas" (tin cans) in conditions so appalling that it is difficult to describe them. The sewerage system was not functioning; detainees used the water in the toilets for drinking and plastic bags which they later threw outside their cells for defecation; during the summer the heat in these metal boxes might reach 60° C; there was little ventilation, and detainees had to sit in shifts in front of tiny openings to breathe; they had to cut themselves in order to get attention and medical assistance; the noise and smell were unbearable and must be regarded as inhuman, even for the prison guards working there.

45. The Special Rapporteur could cite many more examples of inhuman and degrading conditions of detention to which many detainees in a large number of countries around the world are subjected. When he asks them about their worst experiences, they usually do not refer primarily to practices of torture during police custody but to the fact that they feel powerless, that they do not have enough to eat, that they do not receive medical treatment even for serious diseases, that the possibilities of being visited by their families are heavily restricted and that they are subjected to inter-prisoner violence, discrimination and exploitation, as well as to corporal punishment and other forms of inhuman and degrading treatment by prison guards.

46. The fact that detainees are locked away from society also means that society is prevented from knowing the truth about life behind bars. Many detainees feel that society has forgotten them and that nobody is interested in their fate. In fact, most people have never seen a place of detention from inside and are not really interested to know what is going on in closed institutions. To justify their lack of empathy with detainees, they hold that "since these people are behind bars, they must have done something wrong and deserve to be treated that way". The Special Rapporteur is time and again asked why he seems to be more concerned with the human rights of criminals than with the human rights of victims of crime.

B. The right of detainees to human dignity

47. The Preamble to the Charter of the United Nations which was adopted in reaction to the systematic denial of human dignity during the Nazi Holocaust, as well as the Universal Declaration of Human Rights, make an explicit link between human rights and human dignity. The dignity of human beings is the moral and philosophical justification for human rights and is grounded in the uniqueness of human beings, their free will, their capacity for moral choice and their individual autonomy. Any deprivation of personal liberty, even if justified for certain reasons, such as the investigation of crime and the punishment of convicts, carries the risk of directly interfering with human dignity, as it severely restricts individual autonomy and makes detainees powerless. This is the reason why international human rights law establishes strict limits on the power of States to deprive human beings of personal liberty and guarantees the right to human dignity for all detainees. According to article 9 of the International Covenant on Civil and Political Rights, no one shall be subjected to arbitrary arrest and detention. All grounds for the deprivation of liberty must be established by law, and the respective domestic procedures shall be strictly followed. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge and shall be entitled to a trial within a reasonable time or to release. Pretrial detention shall not be the general rule but the exception, and release may be subject to bail or other guarantees to appear for trial. Any detainee has the right to lodge habeas corpus proceedings before an independent court, which shall order his or her release if the detention is not lawful. According to article 14, paragraph 2, of the International Covenant, everyone charged with a criminal offence, including any pretrial detainee, shall have the right to be presumed innocent until proved guilty according to law. Article 10 of the International Covenant stipulates that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Pretrial detainees shall be separated from convicted prisoners, and juveniles from adults. The "penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation". This important special provision on the right of detainees to human dignity supplements the absolute prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment in article 7 of the International Covenant and the specific obligations of States laid down in the Convention against Torture by requiring States, and above all prison authorities, to take positive measures to ensure minimum guarantees of humane treatment for persons in their custodial care.[4] This particular obligation to fulfil and protect the various human rights of detainees, above all their rights to food, water, health, privacy, equal access to justice and an effective remedy against torture and other human rights violations, derives from the simple fact that detainees are powerless and can no longer protect

[4] See HRI/GEN/1/Rev.9 (vol. I), sect. II, Human Rights Committee general comment No. 21 (1992), para. 3; see also Manfred Nowak, United Nations Covenant on Civil and Political Rights: CCPR Commentary, 2nd rev. ed. (Kehl/Strasbourg/Arlington, N.P. Engel Verlag, 2005), p. 241 et seq.

these rights through their own initiative.[5] Since State authorities deprived them of personal liberty, it is an obligation of States (and not of families) to ensure that detainees can effectively enjoy their right to human dignity and all other human rights. In addition to the International Covenant and the Convention against Torture, a number of special conventions, such as the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, contain specific rules for certain categories of detainees.

48. Therefore, a comparison of the sad reality in many countries with the important international safeguards of the rights to personal integrity and dignity points to an enormous implementation gap. In fact, pretrial detainees are often kept in detention for a period of time far exceeding the limits of international law, and they do not enjoy the presumption of innocence. The penitentiary system in most countries is not aimed at the reformation and social rehabilitation of convicts but rather simply serves the punitive purpose of locking detainees and prisoners away. Most importantly, the conditions of detention in many places of detention do not meet any international minimum standards as laid down in the Standard Minimum Rules for the Treatment of Prisoners and similar soft law instruments.[6] While international law provides that detainees, in principle, shall enjoy all human rights except the right to personal liberty, reality shows that the great majority of detainees around the world are in fact deprived of most human rights without any reasonable justification. In sum, this arbitrary deprivation and non-fulfilment of most human rights amounts to a systematic denial of human dignity and must, therefore, also be qualified as inhuman and degrading treatment, in violation of articles 7 and 10 of the International Covenant on Civil and Political Rights, and article 16 of the Convention against Torture, respectively.

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[5] In this context, the Special Rapporteur would like to refer to the recent report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation (A/HRC/12/24), which argues that the right to sanitation should be considered a separate human right. The context of detention certainly underpins the argumentation of the independent expert.

[6] The Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in its resolutions 663 C (XXIV) and 2076 (LXII). Although the Standard Minimum Rules use the term "prisoners", rule 4 specifies that the rules of general application in part I are applicable to all detainees, i.e., all persons deprived of liberty. The Standard Minimum Rules are still considered as the most important soft law instrument for the interpretation of the various aspects of the right of detainees contained in article 10 of the International Covenant on Civil and Political Rights: to be treated with humanity and respect for human dignity. They have been supplemented by a number of other universal and regional soft law instruments, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the Assembly in its resolution 43/173; the Basic Principles for the Treatment of Prisoners, affirmed by the General Assembly in its resolution 45/111; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the Assembly in its resolution 45/113; the revised European Prison Rules, adopted on 11 January 2006 by the Committee of Ministers of the Council of Europe in recommendation Rec(2006)2; the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines), adopted by a resolution of the African Commission on Human and Peoples' Rights during its thirty-second ordinary session in October 2002 and approved by the Assembly of Heads of State and Government of the African Union held in Maputo in July 2003.

C. Human dignity: deprivation of liberty but not of liberties

49. Three categories of human rights of detainees can be distinguished based on their respective availability, accessibility and adaptability in the context of the particular circumstances of detention:

(a) Certain rights, which detainees have forfeited as a result of their lawful deprivation of liberty (category A);

(b) Relative rights, which may be restricted for justified reasons (category B);

(c) Absolute rights plus certain other rights, which detainees enjoy in full equality with other human beings (category C).

50. Category A encompasses the right to personal liberty (art. 9, para. 1, of the International Covenant on Civil and Political Rights), although detainees of course enjoy all special rights of detainees laid down in paragraphs 2 to 5 of article 9. In addition, the lawful deprivation of the right to personal liberty also leads to the forfeiture of the right to liberty of movement (art. 12) and all its components, such as the right to choose one's residence and the right to leave one's country.

51. Regarding category B, most human rights are relative rights, i.e., they may be restricted for justified reasons and are subject to the principle of progressive realization. Because of their deprivation of liberty, detainees are usually not in a position to enjoy these rights on an equal footing with other human beings. On the other hand, due to the powerlessness of detainees, prison authorities have a particular responsibility to ensure by means of positive measures that detainees can enjoy these rights as effectively as possible. One of the guiding principles of the Standard Minimum Rules is the minimization of differences between prison life and life in liberty,[7] a principle reinforced by the Robben Island Guidelines, which stipulate that conditions of detention should be in conformity with international standards and provide for steps to be taken against overcrowding and for the separation and appropriate treatment of different groups of detainees, such as pretrial and convicted detainees, women and juveniles.[8] Similarly, the revised European Prison Rules stipulate that "life in prison shall approximate as closely as possible the positive aspects of life in the community".[9] The best practice the Special Rapporteur found during his fact-finding missions in this respect is the "principle of normalization" applied by the prison authorities in Denmark and Greenland.[10] Most prisons are open prisons, where prisoners are free to walk around, to engage in meaningful work and education programmes, to do sports and recreational activities and to feel as least restricted in their freedom and privacy as possible. They usually live in single rooms with all necessary facilities but are not locked in these rooms, even during the night. A corollary of the rehabilitative aim of imprisonment, in accordance with article 10, paragraph 3, of the International Covenant on Civil and Political Rights, is that prisoners should receive treatment

[7] See Rule 60, para. 1, of the Standard Minimum Rules applicable to convicted prisoners: "The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings".

[8] Paras. 33 to 37 of the Robben Island Guidelines.

[9] Rule 5 of the European Prison Rules.

[10] See A/HRC/10/44/Add.2; see also the report of the Special Rapporteur on the Indonesian prison system, which system in principle is based on the same premises (A/HRC/7/3/Add.7, para. 33).

that takes into account to the greatest extent possible the individual needs of every prisoner (principle of individualized treatment) and is tailored to their individual sentence and rehabilitation plan.[11]

52. One of the rights most restricted by the rules and practice of prison life is the right to privacy (art. 17 of the International Covenant on Civil and Political Rights). It is obvious that detainees cannot enjoy the same degree of privacy, including the protection of their family life, sexuality, home and correspondence, as persons living in liberty. On the other hand, the protection of a certain minimum space of privacy is necessary for an individual's autonomy, which is at the heart of human dignity. For many detainees, the lack of privacy is much more difficult to tolerate than the restrictions of certain other rights. The principle of proportionality, which needs to be applied in order to assess whether interferences with the right to privacy are arbitrary and therefore prohibited by article 17 and similar provisions in regional human rights treaties, requires prison authorities to consider whether certain restrictions are really necessary to achieve a legitimate purpose, such as maintaining order within a detention facility. If cells are severely overcrowded, not much privacy is left for individual detainees within the cells. Consequently, prison authorities shall compensate for this lack of privacy by allowing more time for exercise in the open air than the one hour per day provided for in rule 21 of the Standard Minimum Rules. As far as possible, detainees should be kept in open facilities where they are allowed to walk around and interact with other detainees during the day. The extensive "re-education" programme that the Special Rapporteur witnessed in Chinese prisons, even in pretrial detention facilities for persons who should enjoy the presumption of innocence, does not leave any room for a detainee's autonomy and privacy. Most detainees do not even enjoy the right to use a toilet without being watched by others, which is at the heart of one's right to privacy. Usually, a bucket or a hole in the corner of an overcrowded cell serves this purpose.

53. One of the most important rights and needs of detainees is sufficient contact with the outside world (rules 37-39 of the Standard Minimum Rules). For convicted prisoners, the maintenance and improvement of social relations with family, friends and others is one of the essential requirements for social reintegration into society. In reality, in many countries, such as the post-Soviet countries of Eastern Europe and Central Asia, the right to receive family visits is severely restricted, and these restrictions even form part of the sentence. The longer the term of imprisonment, the stricter the prison regime becomes. In the Republic of Moldova, persons serving a life sentence are kept in their cells for 23 hours a day; in the Transnistrian region of the Republic of Moldova, they are even held in solitary confinement. In Mongolia, long-term prisoners are totally isolated from other prisoners and the outside world. Other forms of contact, including correspondence by telephone, are equally restricted and often non-existent for those who cannot afford to pay. Most of these restrictions must be considered as arbitrary interference with the right to privacy.

54. While it is understandable that detainees are not allowed to organize political marches and similar assemblies for reasons of prison security, they do enjoy freedom of religion, expression, information, association and similar freedoms. They shall be kept informed, by whatever means of communication, of outside news (rule 39 of the Standard Minimum Rules) and shall be able to freely discuss any matter, including political issues, subject only to the restrictions necessary for

[11] Rule 63, para. 1, of the Standard Minimum Rules; rule 103 of the European Prison Rules.

upholding the aims listed in articles 19 to 22 of the International Covenant on Civil and Political Rights. In principle, detainees shall also be enabled to exercise their right to vote and other forms of participation in the conduct of public affairs, in accordance with article 25 of the International Covenant.

55. For the exercise of economic, social and cultural rights, detainees are fully dependent on the prison authorities. Most important is the right of detainees to an adequate standard of living, including adequate food, clothing and housing, as provided in article 11 of the International Covenant on Economic, Social and Cultural Rights. Rules 9 to 20 of the Standard Minimum Rules on accommodation, personal hygiene, clothing, bedding and food provide the necessary guidance to State authorities responsible for maintaining detention facilities and make clear that it is the responsibility of the administration to provide detainees with "food of nutritional value adequate for health and strength" (rule 20), with single cells or dormitories with adequate floor space, lighting, heating, ventilation and separate beds (rules 9-11 and 19), with sanitary installations "adequate to enable every prisoner to comply with the needs of nature" (rule 12), with "adequate bathing and shower installations" (rule 13) and "with water and with such toilet articles as are necessary for health and cleanliness" (rule 15). For most detainees in police custody, which may last for several weeks or even months, these minimum standards for a dignified existence are totally out of reach; rather, such detainees are happy if they can share a mattress on the concrete floor with other detainees and are provided some water to drink. However, even convicted prisoners in many countries can only dream of such conditions and depend on their families to provide them with adequate food, water, toilet articles and similar items.

56. Equally important is the right of detainees "to the enjoyment of the highest attainable standard of physical and mental health", as outlined in article 12 of the International Covenant on Economic, Social and Cultural Rights. Rules 22 to 26 of the Standard Minimum Rules provide guidance on the need for medical services in detention facilities, including prison hospitals, psychiatric services, dental care, and women's prenatal and post-natal care and treatment. The medical officer "should daily see all sick prisoners" (rule 25) and shall regularly inspect the quality of food, hygiene, sanitation, ventilation and the observance of the rules concerning physical education and sports and advise the director accordingly (rule 26). Again, reality looks totally different, and it is not only persons in police custody and poor prisoners who are denied access to adequate health care while in detention. Because of bad hygienic, medical and other conditions, many individuals become infected with tuberculosis, HIV/AIDS and other contagious diseases while in detention.

57. For convicted prisoners, the enjoyment of the right to education, including vocational training, in full accordance with article 13 of the International Covenant on Economic, Social and Cultural Rights and rule 77 of the Standard Minimum Rules is an important precondition for successful reformation, social rehabilitation and reintegration into society after release.[12] Recreational and cultural activities shall be provided in all institutions (rule 78), and special attention shall be paid to the maintenance and improvement of social relations and aftercare (rules 79 to 81). In reality, many prison regimes around the world are based on purely punitive theories and do not regard the proper preparation of prisoners for a life after release as their responsibility.

[12] See also A/HRC/11/8, paras. 18 and 90-98.

58. Category C contains some of the most important human rights, absolute rights that fully apply to every human being without any restriction. They include, first of all, the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment (article 7 of the International Covenant on Civil and Political Rights), the right not to be subjected to slavery, the slave trade and servitude (art. 8, paras. 1 and 2), the prohibition of imprisonment merely on the ground of inability to fulfil a contractual obligation (art. 11), the prohibition of applying a criminal law or penalty retroactively (art. 15), the right to recognition as a person before the law (art. 16) and the freedom of thought, conscience and religion (art. 18, para. 1). In addition to their absolute nature, these rights are also non-derogable even in times of armed conflict and other emergencies (art. 4, para. 2). Certain other rights, albeit not absolute, shall also be enjoyed by detainees in full equality with other human beings. They include the right to life (art. 6), the right to equal access to justice and a fair trial (art. 14), the right to equality and non-discrimination (art. 2, para. 1, and arts. 3 and 26, as well as art. 2, para. 2, and art. 3 of the International Covenant on Economic, Social and Cultural Rights) and the right to an effective remedy for victims of human rights violations (art. 2, para. 3 of the International Covenant on Civil and Political Rights), including the right of victims of torture and ill-treatment to complain without fear of reprisals, to have their case promptly and impartially examined by competent authorities (art. 13 of the Convention against Torture) and to obtain adequate reparation for the harm suffered (art. 14 of the Convention).

59. Many of these rights, which detainees should enjoy in full equality with other human beings, are routinely violated in a great number of places of detention. In addition to torture, corporal punishment and other forms of ill-treatment, detainees may be subjected to brainwashing and similar forms of "re-education" in violation of their right to freedom of thought, conscience and religion. Sometimes, conditions of detention are so bad that detainees starve to death, commit suicide or die of preventable diseases as a result of the denial or lack of medical treatment. Detainees may also be killed in the course of prison riots or as a result of inter-prisoner violence. States have a particular responsibility to protect and fulfil the right to life of detainees through positive measures and should carry out a thorough and independent forensic examination of every individual case of death of a detainee. In practice, such independent investigations are the exception rather than the rule, and prison officials usually provide "death by natural causes" as the official reason for almost all cases of death in custody, even if it is fairly obvious that the person concerned was beaten to death by prison guards or fellow detainees.

60. Key in this regard is the right to an effective remedy in case of a violation of any human right and the right of equal access to justice by independent and impartial courts. In practice, this right is not available or affordable for most detainees whom the Special Rapporteur has interviewed around the world. Many detainees never see a judge, cannot afford a lawyer, are afraid of reprisals or simply have no trust in the administration of justice, which often is only available to rich people. The Commission on Legal Empowerment of the Poor recently established that four billion people, i.e., almost two thirds of the world population, are effectively denied access to a well-functioning justice system.[13] The great majority of the 9.8 million detainees worldwide are among those who have no effective access to justice and the rule of law.

[13] Commission on Legal Empowerment of the Poor and United Nations Development Programme, *Making the Law Work for Everyone*, vol. I (New York, 2008).

IV. Children in detention

61. Where resources for the fulfilment of basic needs are scarce, the establishment of hierarchies among human beings can instantly be observed. At the bottom are often people who are marginalized because of their age, social status, health condition or disabilities, gender, ethnic or religious origin, status as foreigners or sexual orientation or owing to a drug addiction.

62. International human rights law and standards provide for specific measures for particular categories of detainees, responding to the special situations and needs of such groups. Furthermore, particular consideration should be given to non-custodial measures in relation to groups made vulnerable in detention because they are more likely to experience increased suffering. In several of his past reports, the Special Rapporteur has addressed the particular needs of specific groups in relation to torture and ill-treatment, e.g., the needs of women regarding reproductive health care, family contact, hygiene, etc. (see A/HRC/7/3); persons with disabilities, in relation to whom the Convention on the Rights of Persons with Disabilities establishes standards regarding "reasonable accommodation" (see A/63/175); and drug users, who need special attention to treat withdrawal symptoms but also regarding medical treatment in more general terms, including access to opioid substitution therapy, HIV/AIDS prevention, etc. (see A/HRC/10/44).

A. The dual vulnerability of child detainees

63. Twenty years after the adoption of the Convention on the Rights of the Child, and in spite of the many voices defending the rights of children,[14] children remain particularly vulnerable in detention;[15] according to cautious estimates, currently more than one million children are deprived of their liberty and held in police stations, pretrial facilities, prisons, closed children's homes and similar places of detention (see A/61/299, para. 61). The vast majority of these children are accused of or sentenced for a petty offence; contrary to popular belief, only a small fraction is held in relation to a violent crime. Most of them are first-time offenders.[16]

64. The human rights of children deprived of their liberty deserve particular attention owing to the dual vulnerability of such children: firstly, owing to their detention and like all other detainees, they depend on the State for care; secondly, owing to their age, their psychological stage of development and their physical fragility, what is at stake is not only the well-being of the child at the moment of deprivation of liberty but also his or her further development. From a developmental and psychological perspective, children are in their "formative years", making their time in detention particularly influential on the rest of their lives.

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[14] See, for example, the reports of previous Special Rapporteurs (E/CN.4/1988/17 and E/CN.4/1996/35) but also the landmark study of the independent expert on violence against children (A/61/299).

[15] On the need for a comprehensive juvenile justice policy, see HRI/GEN/1/Rev.9 (vol. II), sect. VI, Committee on the Rights of the Child, general comment No. 10 (2007).

[16] See United Nations Children's Fund, "Children in conflict with the law", child protection information sheet (May 2006).

B. Deprivation of liberty as a last resort

65. International human rights law and standards require that the deprivation of a child's liberty shall always be a last resort and only for the shortest possible time.[17] While any deprivation of liberty must fulfil considerable safeguards,[18] the threshold for detaining a child is even higher. Prior to initiating any judicial process and throughout the following proceedings, serious consideration shall be given to extrajudicial solutions, such as diversion.[19] Detention pending trial shall be limited to exceptional circumstances and whenever possible be replaced by alternative measures, such as close supervision or placement with a family.[20] The imprisonment of a child is only permissible if its overall aim, the reintegration and rehabilitation of the juvenile, cannot be achieved through any other measures. Non-custodial measures such as probation, counselling or vocational training programmes, shall be encouraged.[21] At all stages, the child has the right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth.[22]

66. Reviewing the experience of his fact-finding missions, the Special Rapporteur has unfortunately come to the conclusion that too many children are deprived of their liberty, in violation of the above outlined standards. In many countries, the juvenile justice system, if it exists at all, is rudimentary and does not live up to human rights standards. Extrajudicial interventions or non-custodial measures are more often than not underdeveloped or not considered seriously enough, all of which makes the detention of children a regular procedure instead of a matter of last resort.[23] Furthermore, in many countries the criminal justice system functions as an ill-suited substitute for a lacking or dysfunctional welfare system, resulting in the detention of children who have not committed a crime but who actually require welfare assistance, such as street children.

67. In general the Special Rapporteur is alarmed by the very low age of criminal responsibility in many countries.[24] During his missions, he came across boys and girls as young as 9 or 10 years old who were deprived of their liberty, many of them in prolonged pretrial detention.[25] In this respect, the Special Rapporteur wishes to reiterate the opinion of the Committee on the Rights of the Child according to which

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[17] Article 37, paragraph (b), of the Convention on the Rights of the Child; see also the following soft law standards: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules": General Assembly resolution 40/33, annex, para. 19.1), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules": General Assembly resolution 45/113, para. 1).

[18] See, for example, article 9 of the International Covenant on Civil and Political Rights.

[19] See Beijing Rules, rule 11.1.

[20] See Beijing Rules, rule 13.2 and Havana Rules, rule 17.

[21] United Nations Standard Minimum Rules for Non-custodial Measures (the "Tokyo Rules": General Assembly resolution 45/110, annex); see also art. 40, para. 4 of the Convention on the Rights of the Child.

[22] See art. 40, para. 1 of the Convention on the Rights of the Child.

[23] See, for example, A/HRC/7/3/Add.5, and Committee on the Rights of the Child Concluding Observations: Togo, CRC/C/15/Add.255, para. 74.

[24] For example, eight years in Indonesia: A/HRC/7/3/Add.7, para. 40. See also Committee on the Rights of the Child, general comment No. 10 (2007), paras. 30-35.

[25] See Committee on the Rights of the Child, Concluding Observations: Mongolia, CRC/C/15/Add.264, para. 66; for example in the Republic of Moldova, police detention of juveniles can last up to four months if so decided by the investigative judge: A/HRC/10/44/Add.3, para. 16.

the age of 12 years should be the absolute minimum age of criminal responsibility, and that the minimum age should be raised.[26]

C. Conditions of detention

68. The international human rights framework provides for a number of norms to adequately address the particular needs of children.[27] Following the principle of minimization of the difference between life inside and outside of prisons, juvenile detainees are entitled to the full enjoyment of any civil, economic, political, social or cultural right, save those that are incompatible with the deprivation of liberty.[28] Furthermore, their loss of liberty shall be restricted to the least possible degree, for example by detention in open facilities and reduced security measures. The number of juveniles detained in closed facilities should be small enough to allow for individualized treatment,[29] and the facility shall provide bedding in small group dormitories or individual bedrooms,[30] and respect the need of the juvenile for privacy.[31]

69. To many children deprived of their liberty, the above norms, with their envisaged protection and conditions, must sound as if they are out of touch with reality. Too many of the children whom the Special Rapporteur met on his visits were held in severely overcrowded cells, under deplorable sanitary and hygienic conditions. This was particularly true during the pretrial detention period, despite the intention that pretrial detention should be exceptional for children. In Uruguay the situation of accused and convicted children who were held in extremely poor conditions was alarming. The system of detention was based on a punitive approach. Children had no opportunities for education, work or any other rehabilitative activity, and the boys were locked up for up to 22 hours a day in their cells. The sanitary conditions were very poor. There were no toilets in the cells, which sometimes forced detainees to wait for hours for a guard to let them go to the toilet. At the Piedras Home, the detainees had to relieve themselves in bottles and plastic bags, which they threw out of the window, resulting in a repulsive smell around the building.

D. Specific forms of abuse

70. Reaffirming the absolute and non-derogable prohibition of torture and Cruel, inhuman or degrading treatment or punishment, article 37, subparagraph (a), of the Convention on the Rights of the Child states that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". Generally speaking, the Special Rapporteur has found children deprived of their liberty to be at a very high risk of ill-treatment. In addition to being at risk of being subjected to torture in order to extract a confession or other information, such children are particularly prone to falling victim to corporal punishment or abuse by fellow detainees.

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[26] Committee on the Rights of the Child, general comment No. 10, para. 32.

[27] Beijing Rules, rule 13.5 and Havana rules, rules 31-37.

[28] Havana Rules, rule 13.

[29] Ibid., rule 30.

[30] Ibid., rule 33.

[31] Ibid., rule 32.

Corporal punishment

71. The jurisprudence of international and regional human rights mechanisms has long held that corporal punishment, whether ordered as punishment for a crime or administered as an educative or disciplinary measure, is contrary to the prohibition of torture and cruel, inhuman or degrading treatment or punishment.[32] Both the Beijing and the Havana Rules explicitly outlaw corporal punishment on juvenile detainees. Rule 67 of the latter furthermore specifies that placement in a dark cell or in closed or solitary confinement, any other punishment that may compromise the physical or mental health of the juvenile, the reduction of diet, the restriction or denial of contact with family members, labour as a disciplinary sanction and collective punishment shall be prohibited.

72. In some countries, however, national laws explicitly allow the beating or caning of young offenders as a disciplinary measure.[33] Even in countries where corporal punishment is prohibited by law, it is often administered on persons deprived of their liberty, particularly on children and often for minor misbehaviours. In some of the special juvenile detention institutions visited, corporal punishment appeared to be a routine practice. The prison authorities of those facilities sometimes openly admitted the regular use of corporal punishment for disciplinary purposes in cases of disobedience, e.g., in facilities in Indonesia and Togo.

73. Methods of corporal punishment reported to the Special Rapporteur in countries such as Indonesia, Togo and Uruguay included stress positions, such as being forced to crouch for one or more hours with bent knees and arms sprawled out; handcuffing to beds for a prolonged period of time; slaps on the head or in the face and beatings with bare hands or instruments, such as truncheons; administering a certain number of strokes with a wooden baton on backs or buttocks; and suspension from window bars. As a means of intimidation, those sanctions were often applied in the presence of other children.

Abuse by fellow detainees

74. A significant part of the abuse of child detainees is inflicted by other detainees, mainly by adults but also by other children. The forms of abuse can be verbal and psychological but also physical, including rape. Reasons for inter-prisoner violence can be competition for scarce resources or factual delegation of powers to privileged detainees by the authorities. It is the duty of the State to protect detainees, particularly members of vulnerable groups, such as children, from any aggression by their fellow detainees. Without any protection from the State, child detainees find themselves at the bottom of the internal pecking order, prone to exploitation by others.

75. A safeguard against the abuse of children by adult detainees is their separation during detention, which finds its legal reflection in numerous hard and soft law

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[32] See A/60/316, paras. 18-28; see also Committee on the Rights of the Child, general comment No. 8 (2006).

[33] For example, the Nigerian Criminal Code, which in section 295 justifies "a blow or other force" for the correction of children, servants and others: A/HRC/7/3/Add.4, para. 57. The Committee on the Rights of the Child, when considering the report of Saudi Arabia, expressed concern that persons under 18 may be subject while in detention to corporal punishment, such as flogging, under article 28 of the 1977 Detention and Imprisonment Regulations: CRC/C/15/Add.148, paras. 33 and 34.

provisions, most prominently in the International Covenant on Civil and Political Rights (art. 10, para. 2 (b), and art. 10, para. 3) and the Convention on the Rights of the Child (art. 37, subpara. (c)).[34] Paragraph 13 of general comment No. 21 of the Human Rights Committee emphasizes that the separation of accused children from adults is a "mandatory provision" of the International Covenant. Furthermore, this rule intends to protect child detainees, who are mostly first-time offenders for petty crimes, against the criminal subculture dominant in many places of detention that could undermine any efforts for reintegration and rehabilitation. Ideally, juvenile detention facilities should be separate institutions with their own premises and specialized staff; if that is not the case, the separation must ensure that children are out of sight and earshot of adults, i.e., that they are held in a separate wing of a prison.[35] Separation should be 24 hours a day. Under no circumstances should adult prisoners guard child detainees.

76. While in most States that the Special Rapporteur has visited there existed a general awareness of the need for separating detainees and for respective norms, the implementation of those principles was at best piecemeal. The lack of separation was particularly disturbing with regard to police custody and pretrial detention, stages in which children found themselves in an environment characterized by tension, fear, abuse and violence. Once in prison, the separation was in some cases enforced only during the night, leaving children exposed to adults throughout the day. In some cases, children were not separated from adults outside of the cell during recreation time, e.g., in Paraguay and the Republic of Moldova. In a few instances, children were left to be guarded by older detainees, who not only lacked the specific training but might abuse their position.

77. One of the most haunting examples was the Criminal Investigation Department in Lagos, Nigeria, where the Special Rapporteur came across an 11-year-old boy who had already been there for two weeks. He was held in an unofficial cell in the worst imaginable conditions, together with approximately 100 other adult detainees, almost all of whom had visible traces of abuse. The cell, which was far too small for the number of persons it held, was covered only by a makeshift roof, which did not provide protection from the sun, making the temperature and humidity unbearable. A hole in one corner of the cell served as a toilet. Food of insufficient quality was provided in insufficient quantities; its distribution was left to the detainees, resulting in an even smaller portion for those who were too vulnerable to fight for it. When the Special Rapporteur interviewed the boy, the boy was too weak to stand.[36]

78. Similar to the uneven power relations between adults and children, older children with a comparably advanced physical development can turn against their fellow child detainees. Separating children according to their age, the stage of their physical development or their level of aggression is a safeguard against such violence and can counter bullying and other harmful peer pressure, especially when criminal responsibility starts at a young age.[37]

79. An exception to the separation of children from adults is only permissible if "it is considered in the child's best interest", a qualification that should be interpreted narrowly but which provides for the possibility that a juvenile reaching the age of

[34] See also the Havana Rules, rule 29, and the Beijing Rules, rules 13.4 and 26.3.

[35] See Beijing Rules, rules 13.4 and 26.3.

[36] A/HRC/7/3/Add.4, appendix I, para. 43.

[37] A/HRC/7/3/Add.7, para. 40; see also Havana Rules, rule 28.

18 can stay at a facility for juveniles if it is not contrary to the best interests of the younger children.[38]

V. Conclusions and recommendations

80. **Throughout his work as the Special Rapporteur on torture, the Special Rapporteur has found that international human rights standards in relation to conditions of detention, although they are clear in terms of the need to ensure respect for the dignity of detainees, are violated in an almost routine manner in many countries. This appears to be caused less by resource constraints than by the punitive approach of most criminal justice systems, though corruption clearly also plays a negative role.**

81. **In order to live up to their international obligations, States should therefore undertake comprehensive justice reforms and provide more resources to the administration of justice, with a view to legally empowering detainees so that they are able to challenge their situation. Other important elements for improving detention conditions are a truly independent judiciary and the creation of independent national monitoring mechanisms, inter alia, through the ratification of the Optional Protocol to the Convention against Torture, which requires the establishment of such mechanisms. The international donor community should, as a matter of priority, assist poorer States in their efforts to reform their judicial and penitentiary systems.**

82. **Conditions of detention should adequately address the needs of detainees, always with a view to full respect for their dignity. Liberty should be restricted to the least possible degree and follow the principle of minimization of the impact of deprivation of liberty with a view to full reformation and rehabilitation. The need for applying these principles is even more pressing in relation to children in detention and their educational and recreational rights.**

83. **On the occasion of the twentieth anniversary of the adoption of the Convention on the Rights of the Child, the Special Rapporteur wishes to recall that the language contained in the Convention is unambiguous when it comes to the detention of children. No child should be detained unless as a last resort. Detention should be only for the shortest appropriate time and should be imposed only if no other alternative measure contributes to the reintegration and rehabilitation of the child.**

84. **The Special Rapporteur would further like to call upon States to put the best interest of the child at the centre of their juvenile justice systems. Furthermore, he would like to remind States of the United Nations expert study on violence against children and the recommendations contained therein and call for their full implementation.**

85. **The Special Rapporteur would also like to recall that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. States are under an obligation to fully**

[38] See art. 37, para. (c) of the Convention on the Rights of the Child, Committee on the Rights of the Child, general comment No. 10, paras. 85 and 86; Havana Rules, rule 29; A/HRC/7/3/Add.3, appendix I, para. 48. For a good practice in this regard, see A/HRC/7/3/Add.7, para. 33.

implement this prohibition, hold perpetrators accountable and provide victims with reparation. Domestic legislation providing for corporal punishment cannot be considered compatible with the Convention against Torture.

86. **The permanent separation of children from adults in places of detention is an indispensable safeguard against the abuse of such children and has to be implemented vigorously.**